

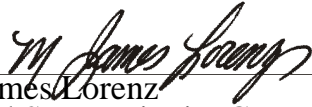
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT M. SCHARRINGHAUSEN,) Civil No. 06cv2167-L(CAB)
Plaintiff,) **ORDER RE: OSC**
v.)
THE UNITED STATES OF AMERICA,)
et al.,)
Defendants.)

Defendants' motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6) on June 26, 2007 was untimely because it was filed after Defendants had answered. "A Rule 12(b)(6) motion must be made *before* the responsive pleading." *Elvig v. Calvin Presbyterian Church*, 375 F.3d 961, 954 (9th Cir. 2004) (emphasis in original). Nevertheless, the motion will not be stricken. The court will construe it as a Rule 12(c) motion for judgment on the pleadings. *See id.*

IT IS SO ORDERED.

DATED: August 6, 2007


M. James Lorenz
United States District Court Judge

COPY TO:

HON. CATHY A. BENCIVENGO
UNITED STATES MAGISTRATE JUDGE

ALL PARTIES/COUNSEL